

1-1 By: Ellis S.B. No. 1607
1-2 (In the Senate - Filed March 14, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 March 31, 2003, reported favorably by the following vote: Yeas 5,
1-5 Nays 1; March 31, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to regulation of state crime laboratories.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subtitle I, Title 4, Government Code, is amended
1-11 by adding Chapter 534 to read as follows:

1-12 CHAPTER 534. OVERSIGHT OF CRIME LAB FACILITIES

1-13 Sec. 534.001. DEFINITIONS. When used in this chapter, the
1-14 following words and terms have the meanings ascribed to them in this
1-15 section:

1-16 (1) For purposes of general forensic analysis, the
1-17 term "forensic laboratory" means any laboratory operated by the
1-18 state or unit of local government that performs forensic testing on
1-19 evidence in a criminal investigation or proceeding or for purposes
1-20 of identification, provided, however, that the examination of
1-21 latent fingerprints by a police agency shall not be subject to the
1-22 provisions of this chapter.

1-23 (2) For purposes of forensic DNA analysis, the term
1-24 "forensic DNA laboratory" means any forensic laboratory operated by
1-25 the state or a unit of local government that performs forensic DNA
1-26 testing on crime scenes or materials derived from the human body for
1-27 use as evidence in a criminal proceeding or for purposes of
1-28 identification and the term "forensic DNA testing" means any test
1-29 that employs techniques to examine deoxyribonucleic acid (DNA)
1-30 derived from the human body for the purpose of providing
1-31 information to resolve issues of identification. Regulation
1-32 pursuant to this chapter shall not include DNA testing on materials
1-33 derived from the human body for the purpose of determining a
1-34 person's genetic disease or medical condition and shall not include
1-35 a laboratory operated by the federal government.

1-36 (3) "DNA testing methodology" means methods and
1-37 procedures used to extract and analyze DNA material, as well as the
1-38 methods, procedures, assumptions, and studies used to draw
1-39 statistical inferences from the test results.

1-40 (4) "Blind external proficiency testing" means a test
1-41 sample that is presented to a forensic laboratory for forensic DNA
1-42 testing through a second agency and that appears to the analysts to
1-43 involve routine evidence submitted for forensic DNA testing.

1-44 (5) "DNA" means deoxyribonucleic acid.

1-45 (6) "Designated offender" means a person convicted of
1-46 and sentenced for any one or more of the following felonies as
1-47 defined in the penal law:

1-48 (A) aggravated assault, murder, sex offenses,
1-49 incest, violent felony offenses, attempted murder, kidnapping,
1-50 attempted kidnapping, burglary, attempted burglary degree; or

1-51 (B) criminal possession of a controlled
1-52 substance, criminal sale and delivery of a controlled substance, or
1-53 felony theft.

1-54 (7) "DNA record" means DNA identification information
1-55 prepared by a forensic DNA laboratory for purposes of establishing
1-56 identification in connection with law enforcement investigations
1-57 or supporting statistical interpretation of the results of DNA
1-58 analysis. A DNA record is the objective form of the results of a DNA
1-59 analysis sample.

1-60 (8) "DNA subcommittee" means the subcommittee on
1-61 forensic DNA laboratories and forensic DNA testing established
1-62 pursuant to Section 534.003.

1-63 (9) "Commission" means the Commission on Forensic
1-64 Science established pursuant to Section 534.002.

2-1 Sec. 534.002. COMMISSION ON FORENSIC SCIENCE. (a) There
2-2 is hereby created in the executive branch the Commission on
2-3 Forensic Science, which shall consist of the following 12 members:

2-4 (1) the commissioner of public health or the
2-5 commissioner's designee, who shall serve as an exofficio member of
2-6 the commission and who shall be chair of the commission; and

2-7 (2) 11 members appointed by the governor.

2-8 (b) Of the members appointed by the governor:

2-9 (1) one member shall be the director of the Department
2-10 of Public Safety crime laboratory;

2-11 (2) one member shall be the director of a forensic
2-12 laboratory located in the state of Texas;

2-13 (3) two members shall be scientists having experience
2-14 in the areas of laboratory standards or quality assurance
2-15 regulation and monitoring and shall be appointed upon the
2-16 recommendation of the commissioner of public health;

2-17 (4) one member shall be a representative of a law
2-18 enforcement agency and shall be appointed upon the recommendation
2-19 of the director of the department of Public Safety;

2-20 (5) one member shall be a representative of
2-21 prosecution services, who shall be appointed upon the
2-22 recommendation of a statewide professional association of
2-23 prosecuting attorneys;

2-24 (6) one member shall be a representative of the public
2-25 criminal defense bar who shall be appointed upon the recommendation
2-26 of a statewide professional association of criminal defense
2-27 attorneys that is authorized to receive grants under Section
2-28 56.003(f) and whose members regularly represent indigent
2-29 defendants in criminal matters;

2-30 (7) one member shall be a representative of the
2-31 private criminal defense bar, who shall be appointed upon the
2-32 recommendation of a statewide professional association of criminal
2-33 defense attorneys;

2-34 (8) two members shall be members at large, one of whom
2-35 shall be appointed upon the recommendation of the lieutenant
2-36 governor, and one of whom shall be appointed upon the
2-37 recommendation of the speaker of the house of representatives; and

2-38 (9) one member who shall be an attorney or judge with a
2-39 background in privacy issues and biomedical ethics, and shall be
2-40 appointed upon the recommendation of the chief judge of the supreme
2-41 court.

2-42 (c) Of the members appointed by the governor, each shall be
2-43 appointed to serve a two-year term. Any member appointed by the
2-44 governor may be reappointed for additional two-year terms.

2-45 (d) Any member chosen to fill a vacancy created otherwise
2-46 than by the expiration of a term shall be appointed by the governor
2-47 for the unexpired term of the member he or she is to succeed. Any
2-48 such vacancy shall be filled in the same manner as the original
2-49 appointment.

2-50 (e) The commission shall meet at least four times each year
2-51 and may establish its own rules and procedures concerning the
2-52 conduct of its meetings and other affairs not inconsistent with
2-53 law.

2-54 (f) No member of the commission shall be disqualified from
2-55 holding any public office or employment, nor shall the member
2-56 forfeit any such office or employment, by reason of the member's
2-57 appointment under this section, and members of the commission shall
2-58 not be required to take and file oaths of office before serving on
2-59 the commission.

2-60 (g) Members of the commission shall receive no compensation
2-61 for their services but shall be allowed their actual and necessary
2-62 expenses incurred in the performance of their functions under this
2-63 chapter.

2-64 Sec. 534.003. POWERS AND DUTIES OF THE COMMISSION.

2-65 (a) The commission shall develop minimum standards and a program
2-66 of accreditation for all forensic laboratories in the state of
2-67 Texas, including establishing minimum qualifications for forensic
2-68 laboratory directors and such other personnel as the commission may
2-69 determine to be necessary and appropriate, including approval of

3-1 forensic laboratories for the performance of specific forensic
3-2 methodologies. Nothing in this chapter shall be deemed to preclude
3-3 forensic laboratories from performing research and validation
3-4 studies on new methodologies and technologies which may not yet be
3-5 approved by the commission at that time. In designing a system of
3-6 accreditation pursuant to this chapter, the commission shall
3-7 evaluate other systems of accreditation.

3-8 (b) The minimum standards and program of accreditation
3-9 shall be designed to accomplish the following objectives:

3-10 (1) increasing and maintaining the effectiveness,
3-11 efficiency, reliability, and accuracy of forensic laboratories,
3-12 including forensic DNA laboratories;

3-13 (2) ensuring that forensic analyses, including
3-14 forensic DNA testing, are performed in accordance with the highest
3-15 scientific standards practicable;

3-16 (3) promoting increased cooperation and coordination
3-17 among forensic laboratories and other agencies in the criminal
3-18 justice system;

3-19 (4) ensuring compatibility, to the extent consistent
3-20 with the provisions of this chapter and any other applicable
3-21 provision of law pertaining to privacy or restricting disclosure or
3-22 redisclosure of information, with other state and federal forensic
3-23 laboratories to the extent necessary to share and exchange
3-24 information, data, and results of forensic analyses and tests; and

3-25 (5) setting forth minimum requirements for the quality
3-26 and maintenance of equipment.

3-27 (c) Any program of forensic laboratory accreditation with
3-28 respect to a DNA laboratory pursuant to this section shall be under
3-29 the direction of the DNA subcommittee established pursuant to
3-30 Subsection (1). The subcommittee shall have the sole authority to
3-31 grant, deny, review, or modify a forensic DNA laboratory
3-32 accreditation pursuant to this chapter, provided that such
3-33 authority shall be effectuated through binding recommendations
3-34 made by the DNA subcommittee to the commission. In the event the
3-35 commission disagrees with any of the binding recommendations of the
3-36 DNA subcommittee made pursuant to this chapter, the commission may
3-37 so notify such subcommittee and request such subcommittee to
3-38 reasonably review such binding recommendations. The DNA
3-39 subcommittee shall conduct such review and either forward revised
3-40 binding recommendations to the commission or indicate, with the
3-41 reasons therefore, that following such review such subcommittee has
3-42 determined that such binding recommendations shall not be revised.

3-43 (d) The program of forensic laboratory accreditation shall
3-44 include, at a minimum, the following requirements:

3-45 (1) an initial laboratory inspection and routine
3-46 inspections, as necessary, to ensure compliance with accreditation
3-47 requirements;

3-48 (2) routine internal and external proficiency testing
3-49 of all laboratory personnel involved in forensic analysis,
3-50 including blind external proficiency testing if the commission, or
3-51 the DNA subcommittee as the case may be, determines such a blind
3-52 proficiency testing program to be practicable and appropriate. In
3-53 determining whether a blind proficiency testing program is
3-54 practicable and appropriate, the commission, or the DNA
3-55 subcommittee as the case may be, shall consider such factors as
3-56 accuracy and reliability of laboratory results,
3-57 cost-effectiveness, time, allocation of resources, and
3-58 availability;

3-59 (3) quality control and quality assurance protocols, a
3-60 method validation procedure, and a corrective action and remedial
3-61 program;

3-62 (4) annual certification to the commission by the
3-63 forensic laboratories of their continued compliance with the
3-64 requirements of the accreditation program, which certification in
3-65 the case of a forensic DNA laboratory shall be forwarded to the DNA
3-66 subcommittee;

3-67 (5) the accreditation of a forensic laboratory may be
3-68 revoked, suspended, or otherwise limited upon a determination by
3-69 the commission, or, in the case of a forensic DNA laboratory, upon

4-1 the binding recommendation of the DNA subcommittee, that the
 4-2 laboratory or one or more persons in its employ:

4-3 (A) is guilty of misrepresentation in obtaining a
 4-4 forensic laboratory accreditation;

4-5 (B) rendered a report on laboratory work actually
 4-6 performed in another forensic laboratory without disclosing the
 4-7 fact that the examination or procedure was performed by the other
 4-8 forensic laboratory;

4-9 (C) showed a pattern of excessive errors in the
 4-10 performance of forensic laboratory examination procedures;

4-11 (D) failed to file a report required to be
 4-12 submitted pursuant to this chapter or the rules and regulations
 4-13 promulgated pursuant to this chapter; or

4-14 (E) violated in a material respect any provision
 4-15 of this chapter or the rules and regulations promulgated pursuant
 4-16 to this chapter.

4-17 (e) No forensic laboratory accreditation shall be revoked,
 4-18 suspended, or otherwise limited without a hearing. The commission
 4-19 shall serve written notice of the alleged violation, together with
 4-20 written notice of the time and place of the hearing, which notice
 4-21 shall be mailed by certified mail to the holder of the forensic
 4-22 laboratory accreditation at the address of such holder at least 21
 4-23 days prior to the date fixed for such hearing. An accredited
 4-24 laboratory may file a written answer to the charges with the
 4-25 commission not less than five days prior to the hearing.

4-26 (f) A laboratory director who knowingly operates a
 4-27 laboratory without obtaining the accreditation required by this
 4-28 chapter, or who, with the intent to mislead or deceive,
 4-29 misrepresents a material fact to the commission or the DNA
 4-30 subcommittee shall be subject to a civil penalty not to exceed
 4-31 \$7,500 and such other penalties as are prescribed by the law.

4-32 (g) The commission and the DNA subcommittee established
 4-33 pursuant to Subsection (l) may require and receive from any agency
 4-34 of the state or any political subdivision thereof such assistance
 4-35 and data as may be necessary to enable the commission or DNA
 4-36 subcommittee to administer the provisions of this chapter. The
 4-37 commission or DNA subcommittee may enter into such cooperative
 4-38 arrangements with the Department of Public Safety, the Texas
 4-39 Department of Health, and any other state agency, each of which is
 4-40 authorized to enter into such cooperative arrangements as shall be
 4-41 necessary or appropriate. Upon request of the commission or DNA
 4-42 subcommittee, any state agency may transfer to the commission such
 4-43 officers and employees as the commission or DNA subcommittee may
 4-44 deem necessary from time to time to assist the commission or DNA
 4-45 subcommittee in carrying out its functions and duties. Officers
 4-46 and employees so transferred shall not lose their civil service
 4-47 status or rights and shall remain in the negotiating unit, if any,
 4-48 established prior to such transfer.

4-49 (h) All of the commission's records, reports, assessments,
 4-50 and evaluations with respect to accreditation and implementation of
 4-51 quality assurance standards, including proficiency testing, and
 4-52 monitoring thereof, shall be archived by the commission.

4-53 (i) The commission and DNA subcommittee may establish,
 4-54 appoint, and set terms of members to as many advisory councils as it
 4-55 deems necessary to provide specialized expertise to the commission
 4-56 with respect to new forensic technologies including DNA testing
 4-57 methodologies.

4-58 (j) The commission or DNA subcommittee shall designate one
 4-59 or more entities for the performance of proficiency tests required
 4-60 pursuant to the provisions of this chapter.

4-61 (k) Upon the recommendation of the DNA subcommittee
 4-62 established pursuant to Subsection (l), the commission shall
 4-63 designate one or more approved methodologies for the performance of
 4-64 forensic DNA testing and shall review and act upon applications by
 4-65 forensic DNA laboratories for approval to perform forensic DNA
 4-66 testing.

4-67 (l) The commission shall establish a subcommittee on
 4-68 forensic DNA laboratories and forensic DNA testing. The chair of
 4-69 the subcommittee shall be appointed by the chair of the commission.

5-1 The chair of the subcommittee shall appoint six other members to the
 5-2 subcommittee, one of whom shall represent the discipline of
 5-3 molecular biology and be appointed upon the recommendation of the
 5-4 commissioner of public health, one of whom shall represent the
 5-5 discipline of population genetics and be appointed upon the
 5-6 recommendation of the commissioner of public health, one of whom
 5-7 shall be representative of the discipline of laboratory standards
 5-8 and quality assurance regulation and monitoring and be appointed
 5-9 upon the recommendation of the commissioner of public health, one
 5-10 of whom shall be a forensic scientist and be appointed upon the
 5-11 recommendation of the commissioner of public health, one of whom
 5-12 shall be representative of the discipline of population genetics
 5-13 and be appointed upon the recommendation of the director of the
 5-14 Department of Public Safety, and one of whom shall be
 5-15 representative of the discipline of forensic science and be
 5-16 appointed upon the recommendation of the director of the Department
 5-17 of Public Safety. Members of the DNA subcommittee shall serve for
 5-18 two-year terms and be subject to the conditions of service
 5-19 specified in Section 534.002.

5-20 (m) The DNA subcommittee shall assess and evaluate all DNA
 5-21 methodologies proposed to be used for forensic analysis and shall
 5-22 make reports and recommendations to the commission as it deems
 5-23 necessary. The DNA subcommittee shall make binding recommendations
 5-24 for adoption by the commission, addressing minimum scientific
 5-25 standards to be utilized in conducting forensic DNA analysis
 5-26 including, but not limited to, examination of specimens, population
 5-27 studies, and methods employed to determine probabilities and to
 5-28 interpret test results. The DNA subcommittee may require a
 5-29 demonstration by an independent laboratory of any proposed forensic
 5-30 DNA testing methodology proposed to be used by a forensic
 5-31 laboratory.

5-32 (n) The DNA subcommittee shall make binding recommendations
 5-33 for adoption by the commission with regard to an accreditation
 5-34 program for laboratories performing forensic DNA testing. Such
 5-35 recommendations shall include the adoption and implementation of
 5-36 internal and external proficiency testing programs including, if
 5-37 possible, a blind external proficiency testing program for forensic
 5-38 laboratories performing forensic DNA testing. The DNA subcommittee
 5-39 shall also provide the commission with a list of accepted
 5-40 proficiency testers.

5-41 (o) The DNA subcommittee shall be authorized to advise the
 5-42 commission on any other matters regarding the implementation of
 5-43 scientific controls and quality assurance procedures for the
 5-44 performance of forensic DNA testing, or on any other matters
 5-45 referred to it by the commission.

5-46 Sec. 534.004. CONFIDENTIALITY. (a) All records, findings,
 5-47 reports, and results of DNA testing performed on any person shall be
 5-48 confidential and may not be disclosed or redisclosed without the
 5-49 consent of the subject of such DNA testing. Such records, findings,
 5-50 reports, and results shall not be released to insurance companies,
 5-51 employers or potential employers, health providers, employment
 5-52 screening or personnel companies, agencies, or services, or private
 5-53 investigation services and may not be disclosed in response to a
 5-54 subpoena or other compulsory legal process or warrant or upon
 5-55 request or order of any agency, authority, division, office,
 5-56 corporation, partnership, or any other private or public entity or
 5-57 person, except that nothing contained in this subsection shall
 5-58 prohibit disclosure in response to a subpoena issued on behalf of
 5-59 the subject of such DNA record or on behalf of a party in a civil
 5-60 proceeding where the subject of such DNA record has put such record
 5-61 at issue.

5-62 (b) Notwithstanding the provisions of Subsection (a),
 5-63 records, findings, reports, and results of DNA testing may be
 5-64 disclosed in a criminal proceeding to the court, the prosecution,
 5-65 and the defense pursuant to a written request on a form prescribed
 5-66 by the commissioner of the division of criminal justice services.

5-67 Sec. 534.005. APPLICABILITY. This chapter shall not apply
 5-68 to a forensic DNA laboratory operated by any agency of the federal
 5-69 government or to any forensic DNA test performed by any such federal

6-1 laboratory.

6-2 Sec. 534.006. PENALTIES. A person who (a) intentionally
6-3 discloses a DNA record, or the results of a forensic DNA test or
6-4 analysis, to an individual or agency other than one authorized to
6-5 have access to such records pursuant to this chapter, or
6-6 (b) intentionally uses or receives DNA records, or the results of a
6-7 forensic DNA test or analysis, for purposes other than those
6-8 authorized pursuant to this chapter, or (c) knowingly tampers or
6-9 attempts to tamper with any DNA sample or the collection container
6-10 without lawful authority shall be guilty of a state jail felony.

6-11 SECTION 2. The change in law made by this Act applies only
6-12 to forensic DNA testing performed on or after the effective date of
6-13 this Act. Forensic DNA testing performed before the effective date
6-14 of this Act is governed by the law in effect when such testing
6-15 occurred, and the former law is continued in effect for that
6-16 purpose.

6-17 SECTION 3. This Act takes effect September 1, 2003.

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